

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0215/1dn
CMH:cjs:rs

September 23, 2005

Randy:

The federal Controlled Substances Act (CSA) designates marijuana as contraband for any purpose and characterizes marijuana as a Schedule I drug; thus Congress expressly finds that marijuana has no acceptable medical uses. When supporters of the California Compassionate Use Act argued that the CSA exceeded Congress's authority under the Commerce Clause, the U.S. Supreme Court affirmed that, as the CSA directly regulates an economic activity, Congress has the power to regulate the production and distribution of marijuana. See *Gonzales v. Raich*, 125 S. Ct. 2195 (U.S. 2005). Also, even if marijuana is reclassified under federal law not to be a Schedule I drug, the CSA would require further regulation and control over its distribution than this substitute amendment contains (registration, production quotas, security).

Please review my definition of "adequate supply." The suggested definition did not include chemically synthesized THC, and the rest of the substitute amendment discusses the amount of THC, not the marijuana itself. OK?

I did not eliminate the language "engages in any other conduct that endangers health of well-being of another" in s. 961.436 (3) (b) 2. because the provision is crafted in a manner that prohibits "an ambitious district attorney" from construing it "in whatever way [he or she] would like." One canon of statutory interpretation, *noscitur a sociis*, holds that a word is known by its associates; thus "operates heavy machinery" will limit how "any other conduct that endangers the health or well-being of another person" is interpreted to something similar to operating heavy machinery. If the language stood alone in a unit then it would invite a broad interpretation; since it does not, it is drafted narrowly enough to avoid the potential problem. But is it too narrowly drafted since your note mentions "any task that would constitute negligence or professional malpractice"?

See my change to s. 961.436 (3) (b) 1. The person could still assert the defense even if he or she had a detectable amount of a restricted controlled substance in his or her blood. However, he or she may be found to be in violation of s. 346.63 (1) (am). Would you like me to include in the substitute amendment a provision that is similar to s. 346.63 (1) (d), giving him or her a defense if he or she proves by a preponderance of the evidence that he or she had a valid registry identification card at the time of the alleged violation? One part of the instructions included a 90-day administrative deadline, and another had a six-month deadline. I drafted the former – OK?

Section 990.001 (11) makes a severability clause unnecessary.

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